MONTANA LEGISLATIVE HISTORY

Chapter 180 ~~19~~ 2001

Bill H _____ S 74 Original bill & history X C

H. Committee on BUSINESS & LABOR

Hearing Date(s)	3/9	X C
EXEC ACTION	3/12	X C
		C
		C
Date Out		C

S. Committee on BUSINESS & LABOR

Hearing Date(s)	1/9	X C
EXEC ACTION	1/11	X C
		C
		C

Did this bill originate in an interim committee? ____ Yes ____ No

Committee _____ Report _____

Bill Draft Number: LC0088
Bill Type - Number: SB 74
Short Title: Regulate construction equipment dealership agreements
Primary Sponsor: Walter McNutt

Bill Actions - **Current Bill Progress:** Became Law

Bill Action Count: 52

Action - Most Recent First	Date	Votes Yes	Votes No	Committee
Chapter Number Assigned	04/02/2001			
(S) Signed by Governor	04/02/2001			
(S) Transmitted to Governor	03/27/2001			
(H) Signed by Speaker	03/26/2001			
(S) Signed by President	03/21/2001			
(S) Returned from Enrolling	03/20/2001			
(C) Sent to Printing	03/19/2001			
(S) Sent to Enrolling	03/19/2001			
(H) Returned to Senate	03/17/2001			
(H) 3rd Reading Concurred	03/17/2001	88	12	
(H) Scheduled for 3rd Reading	03/17/2001			
(H) 2nd Reading Concurred	03/15/2001	87	12	
(H) Scheduled for 2nd Reading	03/15/2001			
(H) Scheduled for 2nd Reading	03/14/2001			
(H) Committee Report--Bill Concurred	03/12/2001			(H) Business and Labor
(H) Committee Executive Action--Bill Concurred	03/12/2001	19	0	(H) Business and Labor
(H) Hearing	03/09/2001			(H) Business and Labor
(H) Referred to Committee	02/01/2001			(H) Business and Labor
(H) First Reading	01/15/2001			
(S) Transmitted to House	01/13/2001			
(S) 3rd Reading Passed	01/13/2001	43	1	
(S) Scheduled for 3rd Reading	01/13/2001			
(S) 2nd Reading Passed on Voice Vote	01/12/2001	46	0	
(S) Scheduled for 2nd Reading	01/12/2001			
(S) Committee Report--Bill Passed	01/11/2001			(S) Business and Labor
(S) Committee Executive Action--Bill Passed	01/11/2001	9	0	(S) Business and Labor
(S) Hearing	01/09/2001			(S) Business and Labor
(S) Fiscal Note Printed	01/06/2001			
(S) Fiscal Note Received	01/04/2001			
(S) Referred to Committee	01/03/2001			(S) Business and Labor
(S) First Reading	01/03/2001			

(S) Fiscal Note Requested	12/14/2000
(C) Introduced Bill Text Available Electronically	12/12/2000
(S) Introduced	12/12/2000
(C) Pre-Introduction Letter Sent	12/05/2000
(C) Draft in Assembly/Executive Director Review	12/04/2000
(C) Draft in Final Drafter Review	12/04/2000
(C) Draft in Input/Proofing	12/01/2000
(C) Draft in Edit	12/01/2000
(C) Draft in Legal Review	12/01/2000
(C) Draft Back for Technical Correction	12/01/2000
(C) Pre-Introduction Letter Sent	11/27/2000
(C) Draft in Assembly/Executive Director Review	11/17/2000
(C) Draft in Final Drafter Review	11/16/2000
(C) Bill Draft Text Available Electronically	11/08/2000
(C) Draft in Input/Proofing	11/08/2000
(C) Draft to Drafter - Edit Review [SAB]	11/08/2000
(C) Draft in Edit	11/08/2000
(C) Draft in Legal Review	11/06/2000
(C) Draft On Hold	08/29/2000
(C) Draft to Requester for Review	08/22/2000
(C) Draft Request Received	08/11/2000

Sponsor, etc.

Sponsor, etc.	Last Name/Organization	First Name Mi
Requester	McNutt	Walter
Drafter	Campbell	Bart
Primary Sponsor	McNutt	Walter

Subjects

Description	Revenue/Approp.	Vote Majority Req.	Subject Code
Trade Regulations and Competition		Simple	TRAD

Additional Bill Information

Probable Fiscal Note: Yes
Preintroduction Required: N
Session Law Ch. Number: 180
DEADLINE
Category: General Bills
Transmittal Date: 02/23/2001
Return (with 2nd house amendments) Date: 03/31/2001

Section Effective Dates

Section(s)	Effective Date	Date Qualified
All Sections	01-OCT-01	

SENATE BILL NO. 74

INTRODUCED BY W. MCNUTT

A BILL FOR AN ACT ENTITLED: "AN ACT REGULATING THE TERMINATION, CANCELLATION, NONRENEWAL, SUBSTANTIAL ALTERATION, OR TRANSFER OF CONSTRUCTION EQUIPMENT DEALERSHIP AGREEMENTS."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Definitions.** As used in [sections 1 through 9] the following definitions apply:

(1) "Community of interest" means a continuing financial interest that the grantor and grantee have in common.

(2) "Construction equipment" means any vehicle, machine, or attachment designed or adapted and used in construction, heavy construction, highway construction, and remodeling work.

(3) "Dealer" means a person who is a grantee of a construction equipment dealership situated in this state.

(4) "Dealership" means a contract or agreement, expressed or implied, whether oral or written, including a franchise as defined in 61-4-201, by which a person is granted the right to sell or distribute construction equipment, in which there is a community of interest in the business of offering, selling, or distributing construction equipment.

(5) "Department" means the department of commerce established in 2-15-1801.

(6) "Designated family member" means the spouse, child, grandchild, parent, brother, or sister of a dealer.

(7) "Designated successor" means a person designated in writing by the retiring dealer to succeed in the dealership or, in the case of an incapacitated dealer, a person appointed by a court as the legal representative of the dealer's property or the appointed and qualified personal representative and the testamentary trustee of a deceased dealer.

(8) (a) "Good cause", when used in [sections 2, 3, and 9], means:

(i) failure by a dealer to comply substantially with essential and reasonable requirements imposed upon the dealer by the grantor or sought to be imposed by the grantor, which requirements are not

discriminatory as compared with requirements imposed on other similarly situated dealers either by the terms of the requirements or in the manner of their enforcement; or

(ii) bad faith by the dealer in carrying out the terms of the dealership.

(b) Good cause, when used in [sections 4 through 8], means a showing that succession to a dealership would be detrimental to the public interest or to the representation of the grantor.

(9) "Grantor" means a person who grants a dealership.

(10) "Person" means any individual, partnership, association, corporation, or other entity.

NEW SECTION. **Section 2. Cancellation and alteration of dealerships.** A grantor may not, directly or indirectly, terminate, cancel, fail to renew, or substantially change the competitive circumstances of a dealership agreement without good cause. The burden of proving good cause is on the grantor.

NEW SECTION. **Section 3. Notice of termination or change in dealership.** (1) Except as provided in subsections (2) and (3), a grantor shall provide a dealer at least 90 days' prior written notice by certified mail of termination, cancellation, nonrenewal, or substantial change in competitive circumstances. The notice must state all the reasons for termination, cancellation, nonrenewal, or substantial change in competitive circumstances and must provide that the dealer has 60 days from receipt of the notice in which to rectify any claimed deficiency. If the deficiency is rectified within 60 days, the notice is void.

(2) If the reason for termination, cancellation, nonrenewal, or substantial change in competitive circumstances is nonpayment of sums due under the dealership, the dealer is entitled to 10 days' prior written notice by certified mail. If the dealer does not remedy the default within 10 days after receipt of the notice, the notice is effective according to its terms.

(3) The notice provisions of this section do not apply if the reason for termination, cancellation, or nonrenewal is insolvency, the occurrence of an assignment for the benefit of creditors, or bankruptcy.

NEW SECTION. **Section 4. Transfer.** A grantor may not unreasonably withhold consent to any transfer of the dealer's business or transfer of the stock or other interest in the dealership to a designated family member, to the principal owner of the dealership, or to a person whom the dealer wishes to designate as a designated successor. The grantor may require that the designated successor or designated family member meet the reasonable requirements of the grantor. The requirements must be specified and made available to any dealer upon request but may not extend beyond business, financial, character, and

experience qualifications. If a grantor determines that a proposed transferee does not meet the requirements, the grantor shall give the dealer written notice stating the specific reasons for withholding consent.

NEW SECTION. **Section 5. Refusal to honor succession to ownership -- notice required.** (1) If a grantor believes that good cause exists for refusing to honor the succession to the ownership and operation of a dealership by a designated family member or by a designated successor under the existing franchise agreement, the grantor may, within 30 days of receipt of notice of the designated family member's or designated successor's intent to succeed the dealer in the ownership and operation of the dealership, serve upon the designated family member or designated successor and the department notice of the grantor's refusal to honor the succession and of the grantor's intent to discontinue the existing franchise agreement with the dealership no sooner than 60 days from the date the notice is served.

(2) The notice must state the specific grounds for the refusal to honor the succession and the intent to discontinue the existing franchise agreement with the dealership no sooner than 60 days from the date the notice is served.

(3) If notice of refusal and discontinuance is not timely served upon the designated family member or designated successor and the department or if the department rules in favor of the complainant in a hearing held pursuant to [section 6], the franchise agreement must continue in effect subject to termination only as otherwise permitted by law.

NEW SECTION. **Section 6. Procedure to determine right to succeed.** (1) A designated family member or designated successor who receives notice of the grantor's refusal to honor succession to the ownership and operation of the dealership may, within the 60-day period provided for in [section 5], file with the department a verified complaint for a hearing and determination by the department on whether good cause exists for refusal and discontinuance.

(2) The grantor shall establish good cause for refusal to honor the succession to ownership.

(3) The franchise agreement must continue in effect until the final determination of the issues raised in the complaint.

(4) If the grantor prevails, the department shall include in its order approving the termination of the franchise agreement reasonable conditions affording the complainant an opportunity to receive fair and reasonable compensation for the value of the dealership.

(5) Any decision by the department may be reviewed pursuant to Title 2, chapter 4, part 7.

NEW SECTION. **Section 7. Written designation of succession unaffected.** [Sections 4 through 8] do not preclude a dealer from designating any person as the dealer's successor by written instrument filed with the grantor.

NEW SECTION. **Section 8. Civil damages.** A dealer suffering pecuniary loss due to a violation of [sections 4 through 8] who prevails in a civil action for the loss is entitled to damages equal to the pecuniary loss, together with court costs and reasonable attorney fees.

NEW SECTION. **Section 9. Action for damages and injunctive relief.** If any grantor violates [sections 1 through 9], a dealer may bring an action against the grantor in any court of competent jurisdiction for damages sustained as a consequence of the grantor's violation, together with the actual costs of the action, including reasonable attorney fees, and the dealer also may be granted injunctive relief against unlawful termination, cancellation, nonrenewal, or substantial change of competitive circumstances.

NEW SECTION. **Section 10. Codification instruction.** [Sections 1 through 9] are intended to be codified as an integral part of Title 30, chapter 11, and the provisions of Title 30, chapter 11, apply to [sections 1 through 9].

- END -

MINUTES

MONTANA SENATE
57th LEGISLATURE - REGULAR SESSION
COMMITTEE ON BUSINESS AND LABOR

Call to Order: By **CHAIRMAN MIKE TAYLOR**, on January 9, 2001 at 8:00 A.M., in Room 422 Capitol.

ROLL CALL

Members Present:

Sen. Mike Taylor, Chairman (R)
Sen. Mike Sprague, Vice Chairman (R)
Sen. Edward Butcher (R)
Sen. Vicki Cocchiarella (D)
Sen. Sam Kitzenberg (R)
Sen. Dale Mahlum (R)
Sen. Glenn Roush (D)
Sen. Don Ryan (D)

Members Excused: Sen. Dale Berry (R)

Members Absent: None.

Staff Present: Bart Campbell, Legislative Branch
Kyanne Kelly, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB112, 1/6/2001; SB106, 1/6/2001; SB93, 1/6/2001; SB74, 1/6/2001

Executive Action:

{Tape : 1; Side : B; Approx. Time Counter : 1}

George Bennett, Montana Banker's Association explained that when article 3 of the Uniform Commercial Code was last revised, this particular section was left out. This section sets up a procedure to remedy a situation where a check has been stolen or lost. Without this provision checks can be in limbo for some time.

Bob Pyfer, Montana Credit Union League stated this bill would facilitate the replacement of lost checks.

Keith Colbo, Montana Independent Bankers, supports this bill.

Opponents' Testimony: None

Questions from Committee Members and Responses:

{Tape : 1; Side : B; Approx. Time Counter : 5.8}

SENATOR GLENN ROUSH asked about the 90 day waiting period for lost checks.

Bob Pyfer said that most checks turn up within 90 days. He said this applies to cashier checks or certified checks, not a check written on the customers account.

SENATOR SPRAGUE asked how long a certified check could be lost before the banks no longer has liability.

Bob Pyfer said there was no time limit on that, and that is what this bill provides for.

Closing by Sponsor:

{Tape : 1; Side : B; Approx. Time Counter : 13.3}

SENATOR MIKE HALLIGAN said this bill would aid commerce.

HEARING ON SB 74

Sponsor: **SENATOR WALTER L. McNUTT, SD 50, SIDNEY**

Proponents: **Tom Zimmer, Tri-State Truck & Equipment**
Mike Matz, Western Plains Machinery Company
Duane Merkanfast, John Deere Dealer

Brad Griffin, Montana Retail Equipment Association
Webb Brown, Montana Chamber of Commerce
Charles Brooks, Billings Chamber of Commerce

Opponents: **Riley Johnson, Equipment Manufacturing Association**
Annie Barris, Department of Commerce

Opening Statement by Sponsor:

{Tape : 1; Side : B; Approx. Time Counter : 15.5}

SENATOR WALTER MCNUTT, SD 50, Sidney explained this bill adds a section including construction equipment dealers in the law that covers contracts of adhesion for farm equipment dealers.

Proponents' Testimony:

{Tape : 1; Side : B; Approx. Time Counter : 22.2}

Tom Zimmer, Tri-State Truck & Equipment stated there have been a lot of mergers and consolidations in the equipment field. He wanted the construction equipment distributors investment to be protected in the case of merger and consolidation by the national distributors

Mike Matz, Western Plains Machinery Company stated that when he bought his company he believed he was covered under this law.

Duane Merkanfast, John Deere Dealer is very supportive of this legislation.

Brad Griffin, Montana Retail Equipment Association handed out information which showed all the different provisions of a bill like this. **EXHIBIT(bus06a06)** He stated 41 states already have this buy back provision.

Webb Brown, Montana Chamber of Commerce stated the provisions in the bill are reasonable, and he supports the bill.

Charles Brooks, Billings Chamber of Commerce said this bill is protection for small equipment dealers.

Opponents' Testimony:

{Tape : 2; Side : A; Approx. Time Counter : 5.1}

Riley Johnson, Equipment Manufacturer's Association said they oppose this bill on the grounds that this is not a franchise, but a contract.

Informational Witnesses

Annie Barris, Department of Commerce said this bill is placed in the Department of Commerce for oversight, and she made herself available to answer questions.

Questions from Committee Members and Responses:

{Tape : 2; Side : A; Approx. Time Counter : 14.2}

SENATOR VICKI COCCHIARELLA asked **Mr. Zimmer** if this bill had to do with buyback.

Tom Zimmer said it did have to do with buyback.

SENATOR DALE MAHLUM asked **Riley Johnson** if this bill would preclude manufacturers from wanting to do business in Montana.

Riley Johnson stated that was a very realistic position to take.

Closing by Sponsor:

{Tape : 2; Side : B; Approx. Time Counter : 2.9}

SENATOR MCNUTT state that manufacturers decide what's in the contract and the dealers can't alter the contract. He said this bill will not drive manufacturers out of the state.

BUSINESS & EMPLOYMENT
EXHIBIT NO. 6
DATE 1-9-2001
BILL NO. SB 74 Brad Griffin

MONTANA

Canceled Dealership Contracts Repurchase Requirements

Sec. 30-11-701.
Definitions.

As used in this part, the following definitions apply:

(1) "Current net price" means:

(a) With respect to a dealership contract, the price listed in the wholesaler's, manufacturer's, or distributor's price list or catalog in effect at the time a dealership contract is discontinued or, if none is then in effect, the last available price so listed; and

(b) with respect to a distribution contract, the price listed in the manufacturer's or distributor's price list or catalog in effect at the time a distribution contract is discontinued or, if none is then in effect, the last available price so listed.

(2) "Dealership contract" means a written contract between a retailer and a wholesaler, manufacturer, or distributor in which the retailer becomes a dealer in goods sold by the wholesaler, manufacturer, or distributor, evidenced by a franchise agreement, sales agreement, security agreement, or other similar agreement or arrangement.

(3) "Distribution contract" means a written contract between a wholesaler and a manufacturer or distributor in which the wholesaler becomes a dealer in goods sold by the manufacturer or distributor, evidenced by a franchise agreement, sales agreement, security agreement, or other similar agreement or arrangement.

(4) "Inventory" means:

(a) Farm implements, machinery, attachments, and repair parts;

(b) Industrial and construction equipment and repair parts; and

(c) Automobiles, trucks, and repair parts sold by an automobile or truck dealer as defined in Sec. 61-1-314.

(d) Motorcycles, motor-driven cycles, recreational vehicles, and quadricycles, as those terms are defined in Title 61, chapter 1, part 1, and repair parts;

(e) Snowmobiles, as defined in 23-2-601, and repair parts;

(f) Off-highway vehicles, as defined in 23-2-801, and repair parts; and

(g) Vessels, as defined in 23-2-502, detachable motors or engines used to propel vessels, and repair parts.

(5) "Net cost" means:

(a) With respect to a dealership contract, the price actually paid for an inventory item by the retailer to the wholesaler, manufacturer, or distributor, plus applicable freight costs paid by or charged to the retailer; and

(b) With respect to a distribution contract, the price actually paid for an inventory item by the wholesaler to a manufacturer, or distributor, plus applicable freight costs paid by or charged to the wholesaler.

(6) "Retailer" or "retail dealer" means any individual, partnership, association, or corporation engaged in the business of selling inventory, as defined in this section, to the general public.

(7) "Wholesaler" means any individual, partnership, association, or corporation engaged in the business of selling inventory, as defined in this section, to retailers.

Sec. 30-11-702.
Repurchase of inventory items upon cancellation of dealership or distribution contract.

1. If a retailer enters into a written dealership contract and either the wholesaler, manufacturer, distributor, or retailer cancels the contract, such wholesaler, manufacturer, or distributor shall, at the retailer's request, pay to the retailer, or credit to the retailer's account if the retailer has outstanding any sums owing the wholesaler, manufacturer, or distributor, an amount equal to:

(a) 100% of the net cost of all new, unused, undamaged and complete inventory items held by the dealer at the time of cancellation, plus cost of freight to return the inventory; and

(b) 100% of the current net price of each repair part carried on the most recent price list or catalog or the last catalog or price list in which the repair part was listed as provided by the manufacturer or distributor and held by the dealer at the time of cancellation, plus cost of freight to return the repair parts.

2. If a wholesaler enters into a written distribution contract and either the wholesaler, manufacturer, or distributor cancels the contract, the manufacturer or distributor shall, at the wholesaler's request, pay to the wholesaler, or credit to the wholesaler's account if the wholesaler has outstanding any sums owing to the manufacturer or distributor, an amount equal to:

(a) 100% of the net cost of all new, unused, undamaged, and complete inventory items, except repair parts, held by the wholesaler at the time of cancellation; and

(b) 100% of the current net price of each repair part carried on the most recent price list or catalog provided by the manufacturer or distributor and held by the wholesaler at the time of cancellation.

3. Payment of allowance of credit to the retailer's or wholesaler's account of the sum required in subsection (1) of (2) must be made within 60 days of the return of the inventory items to the wholesaler, manufacturer, or distributor. Title to such inventory items passes to the wholesaler, manufacturer, or distributor upon making such payment.

Sec. 30-11-703.
Excepted inventory.

The following inventory is not subject to the repurchase requirement of Sec. 30-11-702:

(1) Any repair part that has a limited storage life or is otherwise subject to deterioration, such as rubber items, gaskets, or wet-charge batteries;

(2) Any repair part that is in a broken or damaged package;

(3) Any single repair part that is priced as a set of two or more items;

(4) Any repair part that because of its condition is not resalable as a new part without repackaging or reconditioning;

(5) Any inventory for which the retailer is unable to furnish evidence satisfactory to the wholesaler, manufacturer, or distributor of title, free and clear of all claims, liens, and encumbrances;

(6) Any inventory the retailer desires to keep, if he has contractual right to do so;

(7) Any inventory item other than a repair part that is not in essentially new, unused, undamaged, and complete condition;

(8) Any repair part that is not in new, unused, or undamaged condition;

(9) Any inventory item, other than a repair part, that has been stocked for 36 months or more prior to notice of termination of the contract;

(10) Any inventory that was ordered by the retailer after the date of notification of termination of the contract; and

(11) Any inventory that was acquired from any source other than the wholesaler, manufacturer, or distributor.

Sec. 30-11-704.
Repurchase of inventory of deceased retailer or wholesaler.

If the retailer, wholesaler, or majority stockholder in a corporation operating as a retailer or wholesaler entitled to payment under this part dies, the wholesaler, manufacturer, or distributor shall, unless the heirs or devisees of the deceased agree to continue to operate the dealership, repurchase the inventory from the heirs or devisees in the manner prescribed in Sec. 30-11-702.

Sec. 30-11-705 through 30-11-710 reserved.

Sec. 30-11-711.
Rights not affected.

1. This part does not affect any contractual right of wholesaler, manufacturer, or distributor to charge back to the retailer's or wholesaler's account any amount previously credited or paid as a discount incident to the retailer's or wholesaler's purchase of the goods.

2. This part does not affect any security interest that any financial institution, person, wholesaler, manufacturer, or distributor may have in the inventory of the retailer or wholesaler.

Sec. 30-11-712.
Civil liability.

If any wholesaler, manufacturer, or distributor fails or refuses to repurchase any inventory as required by Sec. 30-11-702, the wholesaler, manufacturer, or distributor is liable in a civil action for 100% of the current net price of the inventory, plus any freight charges paid by the retailer or wholesaler, the retailer's or wholesaler's attorney fees, and court costs.

Sec. 30-11-713.
Remedy as supplemental.

1. The provisions of this part are supplemental to any agreement between:

(a) The retailer and wholesaler, manufacturer, or distributor governing the inventory; or

(b) The wholesaler and manufacturer or distributor governing the inventory.

2. The retailer or wholesaler may elect to pursue either his contract remedies or the remedy provided in Sec. 30-11-702. An election to pursue his contract remedies does not bar the retailer's or wholesaler's right to the remedy provided in Sec. 30-11-702 as to any inventory not covered by contract.

Part 8
Termination, Cancellation, Nonrenewal, or Substantial Alteration of Farm Implements Dealership Agreements

Sec. 30-11-801.
Definitions.

As used in this part, the following definitions apply:

(1) "Community of interest" means a continuing financial interest that the grantor and grantee have in common.

(2) "Dealer" means a person who is a grantee of a farm implements dealership situation in this state.

(3) "Dealership" means a contract or agreement, expressed or implied whether oral or written, including a franchise as defined in Sec. 61-4-201, by which a person is granted the right to sell or distribute farm implements, in which there is a community of interest in the business of offering, selling, or distributing farm implements.

(4) "Department" means the department of commerce established in 2-15-1801.

(5) "Designated family member" means the spouse, child, grandchild, parent, brother, or sister of a dealer.

(6) "Designated successor" means a person designated in writing by the retiring dealer to succeed him in the dealership or, in the case of an incapacitated dealer, a person appointed by a court as the legal representative of the dealer's property or the appointed and qualified personal representative and the testamentary trustee of a deceased dealer.

(7) "Farm implement" means any vehicle, machine, or attachment designed or adapted and used exclusively for agricultural operations and only incidentally operated or used on the highways.

(8)(a) "Good cause", when used in 30-11-801 through 30-11-803 and 30-11-811, means:

(i) failure by a dealer to comply substantially with essential and reasonable requirements imposed upon him by the grantor or sought to be imposed by the grantor, which requirements are not discriminatory as compared with requirements imposed on other similarly situated dealers either by the terms of the requirements or in the manner of their enforcement; or

(ii) bad faith by the dealer in carrying out the terms of the dealership.

(b) "Good cause," when used in 30-11-804 through 30-11-809, means a showing that succession to a dealership would be detrimental to the public interest or to the representation of the grantor.

(9) "Grantor" means a person who grants a dealership.

(10) "Person" means any individual, partnership, association, corporation, or other entity.

Sec. 30-11-802.
Cancellation and alteration of dealerships.

No grantor may, directly or indirectly, terminate, cancel, fail to renew, or substantially change the competitive circumstances of a dealership agreement without good cause. The burden of proving good cause is on the grantor.

Sec. 30-11-803.
Notice of termination or change in dealership.

1. Except as provided in subsections (2) and (3), a grantor shall provide a dealer at least 90 days prior written notice by certified mail of termination, cancellation, non renewal, or substantial change in competitive circumstances. The notice must state all the reasons for termination, cancellation, non renewal, or substantial change in competitive circumstances and must provide that the dealer has 60 days from receipt of the notice in which to rectify any claimed deficiency. If the deficiency is rectified within 60 days, the notice is void.

2. If the reason for termination, cancellation, non renewal, or substantial change in competitive circumstances is nonpayment of sums due under the dealership, the dealer is entitled to 10 days prior written notice by certified mail. If the dealer does not remedy such default within 10 days after receipt of the notice, the notice is effective according to its terms.

3. The notice provisions of this section do not apply if the reason for termination, cancellation, or non renewal is insolvency, the occurrence of an assignment for the benefit of creditors, or bankruptcy.

Sec. 30-11-804.
Transfer.

A grantor may not unreasonably withhold consent to any transfer of the dealer's business or transfer of the stock or other interest in the dealership to a designated member or members of the family of the dealer, to the principal owner of the dealership, or to a person whom the dealer wishes to designate as a designated successor. The grantor may require that the designated successor or designated family member meet the reasonable requirements of the grantor. The requirements must be specified and made available to any dealer upon request but may not extend beyond business, financial, character, and experience qualifications. If a grantor determines that a proposed transferee does not meet the requirements, the grantor shall give the dealer written notice stating the specific reasons for withholding consent.

Sec. 30-11-805.
Refusal to honor succession to ownership - notice required.

(1) If a grantor believes that good cause exists for refusing to honor the succession to the ownership and operation of a dealership by a designated family member or by a designated successor under the existing franchise agreement, the grantor may, within 30 days of receipt of notice of the designated family member's or designated successor's intent to succeed the dealer in the ownership and operation of the dealership, serve upon the designated family member or designated successor and the department notice of its refusal to honor the succession

of its intent to discontinue the existing franchise agreement with the dealership no sooner than 60 days from the date the notice is served.

(2) The notice must state the specific grounds for the refusal to honor the succession and the intent to discontinue the existing franchise agreement with the dealership no sooner than 60 days from the date the notice is served.

(3) If notice of refusal and discontinuance is not timely served upon the designated family member or designated successor and the department or if the department rules in favor of the complainant in a hearing held pursuant to 30-11-806, the franchise agreement must continue in effect subject to termination only as otherwise permitted by law.

Sec. 30-11-806.
Procedure to determine right to succeed.

(1) A designated family member or designated successor who receives notice of the grantor's refusal to honor his succession to the ownership and operation of the dealership may, within the 60 day period provided for in 30-11-805, file with the department a verified complaint for a hearing and determination by the department on whether good cause exists for refusal and discontinuance.

(2) The grantor shall establish good cause for refusal to honor the succession to ownership.

(3) The franchise agreement must continue in effect until the final determination of the issues raised in the complaint.

(4) If the grantor prevails, the department shall include in its order approving the termination of the franchise agreement reasonable conditions affording the complainant an opportunity to receive fair and reasonable compensation for the value of the dealership.

(5) Any decision by the department may be reviewed pursuant to Title 2, chapter 4, part 7.

Sec. 30-11-807.
Written designation of succession unaffected.

Sections 30-11-804 through 30-11-809 do not preclude a dealer from designating any person as his successor by written instrument filed with the grantor.

Sec. 30-11-808.
Illegal cancellation of dealership based on natural disaster.

A grantor may not attempt or threaten, cancel, fail to renew, or substantially change the circumstances of a dealership if the attempt or threat is based on the results of a natural disaster, including a sustained drought, in the dealership market area.

Sec. 30-11-809.
Civil damages.

A dealer suffering pecuniary loss due to a violation of 30-11-804 through 30-11-809 who prevails in a civil action for the loss is entitled to damages equal to the pecuniary loss, together with court costs and reasonable attorney fees.

Sec. 30-11-810.
Reserved.

Sec. 30-11-811.
Action for damages and injunctive relief.

If any grantor violates this part, a dealer may bring an action against such grantor in any court of competent jurisdiction for damages sustained as a consequence of the grantor's violation, together with the actual costs of the action, including reasonable attorney fees, and the dealer also may be granted injunctive relief against unlawful termination, cancellation, non renewal, or substantial change of competitive circumstances.

MONTANA SENATE
2001 LEGISLATURE
BUSINESS AND LABOR COMMITTEE
ROLL CALL

DATE 1-9-2001

NAME	PRESENT	ABSENT	EXCUSED
SENATOR DALE BERRY		✓	
SENATOR ED BUTCHER	✓		
SENATOR VICKI COCCHIARELLA			
SENATOR SAM KITZENBERG			
SENATOR DALE MAHLUM			
SENATOR GLENN ROUSH			
SENATOR DON RYAN			
SENATOR MIKE SPRAGUE, VICE CHAIR			
SENATOR MIKE TAYLOR, CHAIR			

DATE 1-9-01

SENATE COMMITTEE ON ~~SB 106~~ BUSINESS & LABOR

BILLS BEING HEARD TODAY: SB 106, SB 93

PLEASE PRINT

NAME	PHONE	REPRESENTING	BILL #	SUPPORT	OPPOSE
JOHN CADBY	443 4121	MT BANKERS ASSN	93 106	X	
Michael P. Malone	447-2008	Wells Fargo Bank NA	106	X	
GEORGE T. BENNETT	443-4093	MONT. BANKS	106 ? 93	X	
Jeff Brandt	444-3988	DofA/ISD	SB112	X	
Keith Colbo	443-4940	MT Indep. Bankers	93 SB 106	X	
Andrea Hornier	443-6820	Verizon	SB112		
Gary VanHorssen	2-0230	State Farm Ins. Co	SB106	X	
Troy McGee	447-8477	MT. Assoc. Chiefs Police	SB112	X	
Kathy McGowan	443-1570	MT Sheriffs & Peace Off	SB112	X	
Phillip Johnson	457-7171	MT Bnrs Assoc	SB106	X	
John M. Doubtley	4203	Leg Auditor	SB112	X	
Jane Jelinski	442-5209	MACo	SB112	X	
DREW DAWSON	444-4458		SB112		

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE 1-9-01

SENATE COMMITTEE ON Business & Labor

BILLS BEING HEARD TODAY:

PLEASE PRINT

NAME	PHONE	REPRESENTING	BILL #	SUPPORT	OPPOSE
Tony Herbel	444-4111	DOA/ISD/9-1-1	SB112		
Bob Pyfer	442-8081	MT Credit Unions League	93	X	
Riley Johnson	443-3797	Equipment Manufacturers Assoc.	SB74		X
Annie Bartos	444-3555	Dept of Commerce	SB74	INFO	AMNTG
Steve Turkiewicz	442-1233	MT Auto Dealers Assn	SB74	X	
Duane Burkenpas	388-4177	MT Equipment Dealers Assn	SB74	X	
Charles Brooks	6982380	Kalispell Chamber	SB-74	X	
WEBB BROWN	442-2405	MT CHAMBER	SB74	X	
MIKE G MATZ	259-5500	Western Plains Mch/Co	SB74	X	
Tim S. Zimmer	254-1728	Tri-State Truck & Equipment	SB74	X	
Brad Griffin	855-5939	MT Equip Dealer Assoc	SB74	X	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

MINUTES

MONTANA SENATE
57th LEGISLATURE - REGULAR SESSION
COMMITTEE ON BUSINESS AND LABOR

Call to Order: By **CHAIRMAN MIKE TAYLOR**, on January 11, 2001 at 8:00 A.M., in Room 422 Capitol.

ROLL CALL

Members Present:

Sen. Mike Taylor, Chairman (R)
Sen. Mike Sprague, Vice Chairman (R)
Sen. Edward Butcher (R)
Sen. Vicki Cocchiarella (D)
Sen. Sam Kitzenberg (R)
Sen. Dale Mahlum (R)
Sen. Glenn Roush (D)
Sen. Don Ryan (D)

Members Excused: Sen. Dale Berry (R)

Members Absent: None.

Staff Present: Bart Campbell, Legislative Branch
Kyanne Kelly, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB157, 1/8/2001; SB59, 1/8/2001
Executive Action: SB112; SB32; SB74; SB93; SB106

Opponents' Testimony: None

Questions from Committee Members and Responses:

{Tape : 1; Side : B; Approx. Time Counter : 24.4}

SENATOR DALE MAHLUM wanted clarification of what limited events meant. Such as in Missoula the fair is six days, would that be one event?

Mark Staples said yes.

Closing by Sponsor:

{Tape : 2; Side : A; Approx. Time Counter : 3.5}

SENATOR NELSON noted that Mark Staples' amendments were a fair solution she supports them.

EXECUTIVE ACTION ON SB 112

{Tape : 2; Side : A; Approx. Time Counter 17.5}

Motion/Vote: **SEN. MIKE TAYLOR** moved that **SB 112 DO PASS. Motion carried unanimously.**

EXECUTIVE ACTION ON SB32

Motion/Vote: **SEN. MAHLUM** moved that **AMENDMENT TO SB32 DO PASS. Motion carried unanimously.**EXHIBIT**(bus08a01)**

Motion/Vote: **SEN. MAHLUM** moved that **SB 32 DO PASS AS AMENDED. Motion carried 9-0.**

EXECUTIVE ACTION ON SB 74

Motion/Vote: **SEN. ROUSH** moved that **SB74 DO PASS. Motion carried unanimously.**

EXECUTIVE ACTION ON SB93

MONTANA SENATE
2001 LEGISLATURE
BUSINESS AND LABOR COMMITTEE
ROLL CALL

DATE 1-11-2001

NAME	PRESENT	ABSENT	EXCUSED
SENATOR DALE BERRY			✓
SENATOR ED BUTCHER	✓		
SENATOR VICKI COCCHIARELLA	✓		
SENATOR SAM KITZENBERG	✓		
SENATOR DALE MAHLUM	✓		
SENATOR GLENN ROUSH	✓		
SENATOR DON RYAN	✓		
SENATOR MIKE SPRAGUE, VICE CHAIR	✓		
SENATOR MIKE TAYLOR, CHAIR	✓		

MONTANA SENATE
2001 LEGISLATURE
BUSINESS AND LABOR COMMITTEE
ROLL CALL VOTE

DATE 1-16-2001 BILL NO. SB74 NUMBER 3

MOTION: ~~Mott~~ Roush moves SB74 do pass

NAME	AYE	NO
SENATOR DALE BERRY		
SENATOR ED BUTCHER		
SENATOR VICKI COCCHIARELLA		
SENATOR SAM KITZENBERG		
SENATOR DALE MAHLUM		
SENATOR GLENN ROUSH		
SENATOR DON RYAN		
SENATOR MIKE SPRAGUE, VICE CHAIR		
SENATOR MIKE TAYLOR, CHAIR		

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
57th LEGISLATURE - REGULAR SESSION
COMMITTEE ON BUSINESS AND LABOR

Call to Order: By **CHAIRMAN JOE MCKENNEY**, on March 9, 2001 at 8:00 A.M., in Room 172 Capitol.

ROLL CALL

Members Present:

Rep. Joe McKenney, Chairman (R)
Rep. Rod Bitney, Vice Chairman (R)
Rep. Gary Matthews, Vice Chairman (D)
Rep. Sylvia Bookout-Reinicke (R)
Rep. Roy Brown (R)
Rep. Dave Gallik (D)
Rep. Kathleen Galvin-Halcro (D)
Rep. Dennis Himmelberger (R)
Rep. Carol C. Juneau (D)
Rep. Jim Keane (D)
Rep. Rick Laible (R)
Rep. Bob Lawson (R)
Rep. John Musgrove (D)
Rep. William Price (R)
Rep. Allen Rome (R)
Rep. Donald Steinbeisser (R)
Rep. Brett Tramelli (D)
Rep. James Whitaker (R)

Members Excused: Rep. Nancy Fritz (D)

Members Absent: None.

Staff Present: Gordon Higgins, Legislative Branch
Jane Nofsinger, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB74, SB421, SB48, 3/5/2001
Executive Action:

HEARING ON SB74

Sponsor: SEN. WALT McNUTT, SD50, SIDNEY

Proponents: Tom Zimmer, Tri-County Truck and Equipment, Billings
John Eyne, Pioneer Equipment, Butte
Duane Burkenpas, John Deere Dealer, Gallatin
Derrick Torgenson, equipment dealer
Russ Ritter, Modern Machinery, Missoula
Brad Griffin, Montana Equipment Dealers Assn.
Steve Turkowicz, Montana Auto Dealers Assn.

Opponents: Riley Johnson, Equipment Manufacturers Institute

Opening Statement by Sponsor:

SEN. WALTER MCNUTT, SD50, SIDNEY, said this bill was requested by the Montana Equipment Dealers Assn., of which he is a member. He said the bill is to correct an oversight in the code. The bill would regulate the termination, cancellation, and transfer of construction equipment dealership agreements. He said manufacturers are consolidating dealerships and dealer termination is not being done fairly. He said this bill parallels the Montana Code 30-11-8. He said the dealer and manufacturer contracts are "contracts of adhesion," which are on a take it or leave it basis and allow no altering. The contracts, he said, specify the terms of the buy-backs which are done at discount even though the dealer is required to maintain parts before they are allowed to get any new equipment. He said another requirement was for the dealer to purchase special tools from the manufacturer. He said, "I just got two boxes in and they cost me $12,000."

Proponents' Testimony:

Mr. Zimmer said he employed 39 people in Great Falls and Billings. He continued that he had been in business since 1961 and offered 8 lines of construction equipment. He noted the tremendous amount of consolidation among manufacturers like Case, Holland, and International Harvester. He explained when "A" acquires "B" the acquiring manufacturer gives the line of equipment to their dealer, and this leaves the other dealer without a line of equipment. He said the parts inventory is purchased back at cost less 25% restocking charge plus shipping costs. He said this bill will protect the people of Montana and will not hinder business. He noted the agricultural and auto dealers have had this protection in statute and the equipment dealers would like to have it also.

Mr. Eyne said he was the only construction equipment dealer left in Butte and he had been in business for 20 years. He said with the many dealers who had been bought out or merged he felt fortunate to retain his dealership in place. He said it was his hope it would be there for his daughter to run. He told about one manufacturer which had been bought out by another, yet he had to buy thousands of dollars in parts. He explained these were unique parts and no one else used them. He said dealers should be given 90 days notice of termination and allowed to return their parts at fair market value.

Mr. Burkenpas said he was going through three contract terminations. He said he received a $5000 buyback on a $9000 set-up with a $3500 freight cost. He said he would have been charged a $35,000 penalty and $4,000 in freight, if he had not had an agreement. Without the agricultural dealer law, he would not have been covered and he encouraged the committee to support the industry and dealers.

Mr. Torgerson said he had been involved in a buyback before the law was passed and it was "a heavy-handed, one-way street." He said he was there in support of the equipment people.

Mr. Ritter said the company he represented had been in business 17 years and was owned by the Washington Company. He said dealers should be able to expect fairness whether they were large or small. He said dealers should be given notice and 90 days seemed like a good amount of time. He added the bill supports Montana people, jobs and industry.

Mr. Griffin said the courts decide many things in Montana and **SEN. MCNUTT** told of a case where the judge ruled against the Montana dealer. He said this law would shore things up. He presented a compilation of all the states' laws on buybacks. **EXHIBIT(buh54a01)**

Mr. Turkowicz said his industry was already included in this law but he welcomed his brothers in equipment.

Opponents' Testimony:

Mr. Johnson said great concern had been expressed today about buy-backs, but this bill does not reference buybacks. He said that is because it is already addressed in 30-11-701. He said he saw no purpose in a new section because it is already covered in the code. EXHIBIT**(buh54a02)** He said his organization had not been contacted during the drafting of the bill. He said if this bill was passed it would affect private contracts.
{Tape : 1; Side : B; Approx. Time Counter : 0}

He presented the committee his written testimony.
EXHIBIT(buh54a03)

Informational Witness:

Peter Ohman, Deprtment of Commerce, said he was available for questions.

Questions from Committee Members and Responses:

REP. BROWN asked **SEN. MCNUTT** about the statement **Mr. Johnson** made that this was already covered in state law. **SEN. MCNUTT** said the judge did not see it the same way **Mr. Johnson** saw it. "The judge said the code did not cover us," he explained, "So we are making it in plain language."

REP. KEANE asked what kind of insurance policy there was on parts returned. **SEN. MCNUTT** said there were thousands of parts, some bought by choice, and some by manufacturer's demands. He said it seemed like they should be able to insure the parts, but there were some, like rubber gaskets, which probably couldn't be insured. For example, the rule is if there are two parts in a package, they can't return one only. He added it was an issue for fairness, not insurance.

REP. BOOKOUT-REINICKE asked if he had diagnostic equipment and got a new one, could the old one be returned. **SEN. MCNUTT** said no, he had a scad of diagnostic tools after being at this business for 30 some years. He said he had wound up with obsolete tools and parts, and that was just the way itwas.

REP. LAIBLE asked what the bill does because he didn't see anything about buyback. **SEN. MCNUTT** said it puts in statute that equipment dealers are eligible for Section 7. He said if it is not recognized by the Court, they cannot prevail on Section 7.

REP. GALVIN-HALCRO asked **SEN. MCNUTT** if he wanted to sell or pass on his business, what does the bill do for him or whoever he would pass it on to. **SEN. MCNUTT** said the contract of adhesion determined if the business could be passed on. He said the manufacturer must approve who the business is sold to. This bill would allow him to prevail and get his money back, otherwise he would be subject to their terms. He said with this bill his wife could take over after his death.

REP. BITNEY asked what happened to the inventory when the dealer was terminated or went out. **SEN. MCNUTT** said it goes to the manufacturer if new and unused, if can be returned under the

terms of the contract. **REP. BITNEY** asked about the elective parts the dealer purchased. **SEN. MCNUTT** said a dealer has a trade area and they put parts on the shelf to support the inventory they have sold to customers. **REP. BITNEY** asked how they dealt with obsolete or changed parts. **SEN. MCNUTT** said he is still selling parts for tractors made in the late 1940's, and some combines which are out of existence. **REP. BITNEY** asked how his business has changed with the advent of next day and express delivery. **SEN. MCNUTT** said when the customer comes in, "We had better have the part on our shelf." He remarked that 15 years ago his parts inventory was $150,000, and now it is $500,000.

Closing by Sponsor:

SEN. MCNUTT asked the committee to keep in mind that this bill sets straight who is eligible to participate in Section 7, because the judge did not see it that way. He added that receiving $35,000 for $150,000 worth of tools and equipment was wrong, and the equipment dealers needed something more fair.

{Tape : 1; Side : B; Approx. Time Counter : 20.9}

HEARING ON SB421

Sponsor: **SEN. FRED THOMAS, SD31, BITTEROOT**

Proponents: **Steve Turkowicz, Montana Auto Dealers**
Dick Olson, Montana Auto Dealers
Mike Grimes, Grimes Motors
Tom Harrison, Montana Auto Dealers Assn.
Brad Griffin, Montana Equipment Dealers
Russ Ritter, Washington Company
Duane Burkenpas, Gallatin Equipment Company
Derrick Torgenson, Torgenson, Inc.
John Eyne, Pioneer Equipment, Butte
Tom Zimmer, Tri-State Tractor & Equipment, Billings

Opponents: **Mona Jamison, General Motors**

Opening Statement by Sponsor:

SEN. FRED THOMAS, SD31, BITTEROOT, said the bill is about auto dealer franchise laws. The act requires wholesalers, manufacturers or distributors that terminate, cancel, do not renew, or refuse to continue a dealership contract to reimburse a

The following exhibit is more than the 10 (ten) page limit for scanning.

Exhibit: 1
DATE: 3.9.01

SB 74

The complete exhibit is located with the minutes at the

Montana Historical Society Archives
225 North Roberts
Helena, MT 59620-1202
(406) 444-4775

ory: En. Sec. 2754, Civ. C. 1895; re-en. Sec. 5294, Rev. C. 1907; re-en Sec. 7809, 1921; Cal. Civ. C. Sec. 2030; Based on Field Civ. C. Sec. 1049; re-en. 7809, R.C.M. C.M. 1947, 2-405.

1-606. **Authority of factor.** In addition to the authority of agents in , a factor has actual authority for his principal, unless specially restricted,

insure property consigned to him uninsured;

sell on credit anything entrusted to him for sale, except such things as it rary to usage to sell on credit, but not to pledge, mortgage, or barter the and

delegate his authority to his partner or servant but not to any person in ependent employment.

tory: En. Sec. 3171, Civ. C. 1895; re-en. Sec. 5464, Rev. C. 1907; re-en Sec. 7979, 1921; Cal. Civ. C. Sec. 2368; Field Civ. C. Sec. 1267; re-en. 7979, R.C.M. 1935; 1947, 2-406.

11-607. **Ostensible authority.** A factor has ostensible authority to deal ne property of his principal as his own in transactions with persons not having of the actual ownership.

story: En. Sec. 3172, Civ. C. 1895; re-en. Sec. 5465, Rev. C. 1907; re-en Sec. 7980, . 1921; Cal. Civ. C. Sec. 2369; Field Civ. C. Sec. 1268; re-en. 7980, R.C.M. 1935; . 1947, 2-407.

References

tual versus ostensible agency, 28-10-103.
at authority agent has, 28-10-401.

Ostensible authority defined, 28-10-403.

Part 7

Canceled Dealership Contracts Repurchase Requirements

0-11-701. **Definitions.** As used in this part, the following definitions apply:

.) "Current net price" means:

i) with respect to a dealership contract, the price listed in the wholesaler's, ufacturer's, or distributor's price list or catalog in effect at the time a dealership ract is discontinued or, if none is then in effect, the last available price so listed;

b) with respect to a distribution contract, the price listed in the ufacturer's or distributor's price list or catalog in effect at the time a ibution contract is discontinued or, if none is then in effect, the last available e so listed.

2) "Dealership contract" means a written contract between a retailer and a lesaler, manufacturer, or distributor in which the retailer becomes a dealer in ls sold by the wholesaler, manufacturer, or distributor, evidenced by a franchise ement, sales agreement, security agreement, or other similar agreement or ngement.

3) "Distribution contract" means a written contract between a wholesaler a manufacturer or distributor in which the wholesaler becomes a dealer in ds sold by the manufacturer or distributor, evidenced by a franchise agreement, s agreement, security agreement, or other similar agreement or arrangement.

4) "Inventory" means:

(a) farm implements, machinery, attachments, and repair parts;

(b) industrial and construction equipment and repair parts;

(c) automobiles, trucks, and repair parts sold by an automobile or truck dealer lefined in 61-1-314;

(d) motorcycles, motor-driven cycles, recreational vehicles, and quadricycles, as those terms are defined in Title 61, chapter 1, part 1, and repair parts;

(e) snowmobiles, as defined in 23-2-601, and repair parts;

(f) off-highway vehicles, as defined in 23-2-801, and repair parts; and

(g) vessels, as defined in 23-2-502, detachable motors or engines used to propel vessels, and repair parts.

(5) "Net cost" means:

(a) with respect to a dealership contract, the price actually paid for an inventory item by the retailer to the wholesaler, manufacturer, or distributor, plus applicable freight costs paid by or charged to the retailer; and

(b) with respect to a distribution contract, the price actually paid for an inventory item by the wholesaler to a manufacturer or distributor, plus applicable freight costs paid by or charged to the wholesaler.

(6) "Retailer" or "retail dealer" means any individual, partnership, association, or corporation engaged in the business of selling inventory, as defined in this section, to the general public.

(7) "Wholesaler" means any individual, partnership, association, or corporation engaged in the business of selling inventory, as defined in this section, to retailers.

History: En. Sec. 1, Ch. 338, L. 1983; amd. Sec. 1, Ch. 297, L. 1985; amd. Sec. 1, Ch. 51, L. 1989.

30-11-702. Repurchase of inventory items upon cancellation of dealership or distribution contract. (1) If a retailer enters into a written dealership contract and either the wholesaler, manufacturer, distributor, or retailer cancels the contract, such wholesaler, manufacturer, or distributor shall, at the retailer's request, pay to the retailer, or credit to the retailer's account if the retailer has outstanding any sums owing the wholesaler, manufacturer, or distributor, an amount equal to:

(a) 100% of the net cost of all new, unused, undamaged, and complete inventory items held by the dealer at the time of cancellation, plus cost of freight to return the inventory; and

(b) 100% of the current net price of each repair part carried on the most recent price list or catalog or the last catalog or price list in which the repair part was listed as provided by the manufacturer or distributor and held by the dealer at the time of cancellation, plus cost of freight to return the repair parts.

(2) If a wholesaler enters into a written distribution contract and either the wholesaler, manufacturer, or distributor cancels the contract, the manufacturer or distributor shall, at the wholesaler's request, pay to the wholesaler, or credit to the wholesaler's account if the wholesaler has outstanding any sums owing to the manufacturer or distributor, an amount equal to:

(a) 100% of the net cost of all new, unused, undamaged, and complete inventory items, except repair parts, held by the wholesaler at the time of cancellation; and

(b) 100% of the current net price of each repair part carried on the most recent price list or catalog or the last catalog or price list in which the repair part was listed as provided by the manufacturer or distributor and held by the wholesaler at the time of cancellation.

(3) Payment or allowance of credit to the retailer's or wholesaler's account of the sum required in subsection (1) or (2) must be made within 60 days of the return of the inventory items to the wholesaler, manufacturer, or distributor. Title to such inventory items passes to the wholesaler, manufacturer, or distributor upon making such payment.

History: En. Sec. 2, Ch. 338, L. 1983; amd. Sec. 2, Ch. 297, L. 1985; amd. Sec. 8, Ch. 522, L. 1991.

EXHIBIT 2
DATE 2-9-01
SB 71

eferences
rity agreement defined, 30-9-105.

11-703. Excepted inventory. The following inventory is not subject to urchase requirements of 30-11-702:

any repair part that has a limited storage life or is otherwise subject to oration, such as rubber items, gaskets, or wet-charge batteries;

any repair part that is in a broken or damaged package;

any single repair part that is priced as a set of two or more items;

any repair part that because of its condition is not resalable as a new part t repackaging or reconditioning;

any inventory for which the retailer is unable to furnish evidence actory to the wholesaler, manufacturer, or distributor of title, free and clear claims, liens, and encumbrances;

) any inventory the retailer desires to keep, if he has a contractual right to ;

) any inventory item other than a repair part that is not in essentially new, ed, undamaged, and complete condition;

8) any repair part that is not in new, unused, or undamaged condition;

9) any inventory item, other than a repair part, that has been stocked for 36 ths or more prior to notice of termination of the contract;

10) any inventory that was ordered by the retailer after the date of notification rmination of the contract; and

11) any inventory that was acquired from any source other than the olesaler, manufacturer, or distributor.

History: En. Sec. 3, Ch. 338, L. 1983.

30-11-704. Repurchase of inventory of deceased retailer or olesaler. If the retailer, wholesaler, or majority stockholder in a corporation erating as a retailer or wholesaler entitled to payment under this part dies, the olesaler, manufacturer, or distributor shall, unless the heirs or devisees of the ceased agree to continue to operate the dealership, repurchase the inventory from heirs or devisees in the manner prescribed in 30-11-702.

History: En. Sec. 4, Ch. 338, L. 1983; amd. Sec. 3, Ch. 297, L. 1985.

oss-References
Heirs and devisees defined, 72-1-103.

30-11-705 through 30-11-710 reserved.

30-11-711. Rights not affected. (1) This part does not affect any contractual ght of a wholesaler, manufacturer, or distributor to charge back to the retailer's wholesaler's account any amount previously credited or paid as a discount cident to the retailer's or wholesaler's purchase of the goods.

(2) This part does not affect any security interest that any financial institution, erson, wholesaler, manufacturer, or distributor may have in the inventory of the etailer or wholesaler.

History: En. Sec. 5, Ch. 338, L. 1983; amd. Sec. 4, Ch. 297, L. 1985.

Cross-References
Security interest defined, 30-1-201.

30-11-712. Civil liability. If any wholesaler, manufacturer, or distributor fails or refuses to repurchase any inventory as required by 30-11-702, the wholesaler, manufacturer, or distributor is liable in a civil action for 100% of the current net price of the inventory, plus any freight charges paid by the retailer or [illegible]'s attorney fees, and court costs.

30-11-713. Remedy as supplemental. (1) The provisions of this part are supplemental to any agreement between:

(a) the retailer and wholesaler, manufacturer, or distributor governing the inventory; or

(b) the wholesaler and manufacturer or distributor governing the inventory.

(2) The retailer or wholesaler may elect to pursue either his contract remedies or the remedy provided in 30-11-702. An election to pursue his contract remedies does not bar the retailer's or wholesaler's right to the remedy provided in 30-11-702 as to any inventory not covered by contract.

History: En. Sec. 7, Ch. 338, L. 1983; amd. Sec. 6, Ch. 297, L. 1985.

Cross-References
Breach of contract — damages, 27-1-311.

Part 8

Termination, Cancellation, Nonrenewal, or Substantial Alteration of Farm Implements Dealership Agreements

Part Cross-References
Canceled dealership contracts — repurchase requirements, Title 30, ch. 11, part 7.

30-11-801. Definitions. As used in this part, the following definitions apply:

(1) "Community of interest" means a continuing financial interest that the grantor and grantee have in common.

(2) "Dealer" means a person who is a grantee of a farm implements dealership situated in this state.

(3) "Dealership" means a contract or agreement, expressed or implied, whether oral or written, including a franchise as defined in 61-4-201, by which a person is granted the right to sell or distribute farm implements, in which there is a community of interest in the business of offering, selling, or distributing farm implements.

(4) "Department" means the department of commerce established in 2-15-1801.

(5) "Designated family member" means the spouse, child, grandchild, parent, brother, or sister of a dealer.

(6) "Designated successor" means a person designated in writing by the retiring dealer to succeed him in the dealership or, in the case of an incapacitated dealer, a person appointed by a court as the legal representative of the dealer's property or the appointed and qualified personal representative and the testamentary trustee of a deceased dealer.

(7) "Farm implement" means any vehicle, machine, or attachment designed or adapted and used exclusively for agricultural operations and only incidentally operated or used on the highways.

(8) (a) "Good cause", when used in 30-11-801 through 30-11-803 and 30-11-811, means:

(i) failure by a dealer to comply substantially with essential and reasonable requirements imposed upon him by the grantor or sought to be imposed by the grantor, which requirements are not discriminatory as compared with requirements imposed on other similarly situated dealers either by the terms of the requirements or in the manner of their enforcement; or

(ii) bad faith by the dealer in carrying out the terms of the dealership.

(b) Good cause, when used in 30-11-804 through 30-11-809, means a showing succession to a dealership would be detrimental to the public interest or to the esentation of the grantor.

(9) "Grantor" means a person who grants a dealership.

(10) "Person" means any individual, partnership, association, corporation, or er entity.

History: En. Sec. 1, Ch. 45, L. 1985; amd. Sec. 1, Ch. 522, L. 1991.

30-11-802. Cancellation and alteration of dealerships. No grantor may, ectly or indirectly, terminate, cancel, fail to renew, or substantially change the petitive circumstances of a dealership agreement without good cause. The den of proving good cause is on the grantor.

History: En. Sec. 2, Ch. 45, L. 1985.

oss-References

Extinction of contracts — rescission, Title ch. 2, part 17.

30-11-803. Notice of termination or change in dealership. (1) Except provided in subsections (2) and (3), a grantor shall provide a dealer at least 90 ys' prior written notice by certified mail of termination, cancellation, nrenewal, or substantial change in competitive circumstances. The notice must ate all the reasons for termination, cancellation, nonrenewal, or substantial ange in competitive circumstances and must provide that the dealer has 60 days om receipt of the notice in which to rectify any claimed deficiency. If the deficiency rectified within 60 days, the notice is void.

(2) If the reason for termination, cancellation, nonrenewal, or substantial ange in competitive circumstances is nonpayment of sums due under the ealership, the dealer is entitled to 10 days' prior written notice by certified mail. the dealer does not remedy such default within 10 days after receipt of the notice, ne notice is effective according to its terms.

(3) The notice provisions of this section do not apply if the reason for rmination, cancellation, or nonrenewal is insolvency, the occurrence of an ssignment for the benefit of creditors, or bankruptcy.

History: En. Sec. 3, Ch. 45, L. 1985.

30-11-804. Transfer. A grantor may not unreasonably withhold consent to ny transfer of the dealer's business or transfer of the stock or other interest in the lealership to a designated member or members of the family of the dealer, to the rincipal owner of the dealership, or to a person whom the dealer wishes to designate as a designated successor. The grantor may require that the designated successor or designated family member meet the reasonable requirements of the grantor. The requirements must be specified and made available to any dealer upon request but may not extend beyond business, financial, character, and experience qualifications. If a grantor determines that a proposed transferee does not meet the requirements, the grantor shall give the dealer written notice stating the specific reasons for withholding consent.

History: En. Sec. 2, Ch. 522, L. 1991.

30-11-805. Refusal to honor succession to ownership — notice required. (1) If a grantor believes that good cause exists for refusing to honor the succession to the ownership and operation of a dealership by a designated family member or by a designated successor under the existing franchise agreement, the grantor may, within 30 days of receipt of notice of the designated family member's or designated successor's intent to succeed the dealer in the ownership and operation of the dealership, serve upon the designated family member or designated [illegible] honor the succession and of its intent to discontinue the existing franchise agreement with the dealership no sooner than 60 days from the date the notice is served.

(2) The notice must state the specific grounds for the refusal to honor the succession and the intent to discontinue the existing franchise agreement with the dealership no sooner than 60 days from the date the notice is served.

(3) If notice of refusal and discontinuance is not timely served upon the designated family member or designated successor and the department or if the department rules in favor of the complainant in a hearing held pursuant to 30-11-806, the franchise agreement must continue in effect subject to termination only as otherwise permitted by law.

History: En. Sec. 3, Ch. 522, L. 1991.

30-11-806. Procedure to determine right to succeed. (1) A designated family member or designated successor who receives notice of the grantor's refusal to honor his succession to the ownership and operation of the dealership may, within the 60-day period provided for in 30-11-805, file with the department a verified complaint for a hearing and determination by the department on whether good cause exists for refusal and discontinuance.

(2) The grantor shall establish good cause for refusal to honor the succession to ownership.

(3) The franchise agreement must continue in effect until the final determination of the issues raised in the complaint.

(4) If the grantor prevails, the department shall include in its order approving the termination of the franchise agreement reasonable conditions affording the complainant an opportunity to receive fair and reasonable compensation for the value of the dealership.

(5) Any decision by the department may be reviewed pursuant to Title 2, chapter 4, part 7.

History: En. Sec. 4, Ch. 522, L. 1991.

30-11-807. Written designation of succession unaffected. Sections 30-11-804 through 30-11-809 do not preclude a dealer from designating any person as his successor by written instrument filed with the grantor.

History: En. Sec. 5, Ch. 522, L. 1991.

30-11-808. Illegal cancellation of dealership based on natural disaster. A grantor may not attempt or threaten to terminate, cancel, fail to renew, or substantially change the circumstances of a dealership if the attempt or threat is based on the results of a natural disaster, including a sustained drought, in the dealership market area.

History: En. Sec. 6, Ch. 522, L. 1991.

30-11-809. Civil damages. A dealer suffering pecuniary loss due to a violation of 30-11-804 through 30-11-809 who prevails in a civil action for the loss is entitled to damages equal to the pecuniary loss, together with court costs and reasonable attorney fees.

History: En. Sec. 7, Ch. 522, L. 1991.

30-11-810 reserved.

30-11-811. Action for damages and injunctive relief. If any grantor violates this part, a dealer may bring an action against such grantor in any court of competent jurisdiction for damages sustained as a consequence of the grantor's violation, together with the actual costs of the action, including reasonable attorney fees, and the dealer also may be granted injunctive relief against unlawful termination, cancellation, nonrenewal, or substantial change of competitive circumstances.

History: En. Sec. 4, Ch. 45, L. 1985.

EXHIBIT 3
DATE 3-9-01
SB 74

EQUIPMENT MANUFACTURERS INSTITUTE
10 South Riverside Plaza • Chicago, Illinois 60606-3710 • 312-321-1470 • Fax: 312-321-1480
E-mail: emi@emi.org • www.emi.org

3/8/2001

Dear House Business Committee Members:

S.B. 74

EMI is a trade association comprised of over 300 members, mostly agricultural and construction equipment manufacturers, which has served its members for over 100 years.

The Institute is opposed to Senate Bill 74 and similar legislation when proposed elsewhere in the country. This opposition is based on EMI's long and successful history of promoting discussion between manufacturers and dealers instead of passing legislation on the basis that if certain dealers have specific problems with their manufacturer, the problem should be worked out privately between the two parties. Unfortunately, EMI nor any of our member companies were contacted for discussion or negotiation with dealer/distributors or their representative organizations before we were made aware of the legislative intent to address this issue.

Senate Bill 74, if passed, would legislate terms of agreement of private contracts voluntarily entered into by consenting parties. This sets a dangerous precedent regarding the right of all private contracts in the State of Montana. Senate Bill 74 would affect all the manufacturers and dealers throughout the state regardless of whether or not they have any problems. This legislation would not be an end-into-itself, but rather would open the doors to government intrusion into other private contractual relationships.

EMI has taken a recently passed law similar to Senate Bill 74 to court in the State of South Dakota on the grounds that such laws are unconstitutional. The committee may wish to take note of the fact that on March 23, 2000, the United States Circuit Court (Southern/South Dakota) held that the Governor and the Attorney General were the appropriate defendants in the lawsuit, and that the issue need not wait further action to proceed through the federal judiciary process. Such a ruling holds great precedence and significance for legislation similar to Senate Bill 74.

The field of construction is changing rapidly in the United States, and around the globe. In order to remain economically viable participants in the business economy, manufacturers and dealers must both be able to adapt to meet changing markets. This bill would limit necessary changes for both dealers and manufacturers in the State of Montana, which will ultimately affect the range of products offered and the quality of service provided consumers. On behalf of its members, EMI respectfully asks that you vote against Montana Senate Bill 74 on the grounds that it would negatively impact the construction equipment industry and thus the ultimate consumers, contractors in the State of Montana.

Sincerely,

Emmett Barker
President

Joel Riemer
State Legislative Affairs Coordinator

Serving Manufacturers of Agricultural, Construction, Forestry, Materials Handling and Utility Equipment

HOUSE OF REPRESENTATIVES
ROLL CALL

HOUSE BUSINESS AND LABOR COMMITTEE

DATE MARCH 9, 2001

NAME	PRESENT	ABSENT	EXCUSED
Rep. Joe McKenney	✓		
Rep. Gary Matthews	✓		
Rep. Roy Brown	✓		
Rep. Kathleen Galvin-Halcro	✓		
Rep. Carol Juneau	✓		
Rep. Rick Laible	✓		
Rep. John Musgrove	✓		
Rep. Nancy Rice-Fritz			✓
Rep. Don Steinbeisser	✓		
Rep. Jim Whitaker	✓		
Rep. Rod Bitney	✓		
Rep. Sylvia Bookout-Reinicke	✓		
Rep. Dave Gallik	✓		✓
Rep. Dennis Himmelberger	✓		
Rep. Jim Keane	✓		
Rep. Bob Lawson	✓		
Rep. Bill Price	✓		
Rep. Brett Tramelli	✓		
Rep. Allen Rome	✓		

MONTANA HOUSE OF REPRESENTATIVES
VISITORS REGISTER

Business and Labor Committee

DATE MAR. 9, 2001

BILL NO. SB 74 SPONSOR(S) Sen. McNutt

"construction equipment dealerships"

TYPE

PROPONENT (P) OPPONENT (O) INFORMATIONAL (I)

PLEASE PRINT

PLEASE CIRCLE	NAME	ADDRESS	REPRESENTING
(P) O I	John Eyne	215 Centennial	Pioneer Eq
P (O) I	Peter O'Mara	With the	Commerce
(P) O I	Brian Tarpinian	Helena	Tarpinian Law
(P) O I	Duane Burkenpas	Bozeman	Gallatin Eq Co.
P (O) I	Riley Johnson	Helena	Equip. Manufacturers Institute
(P) O I	Tom Zimmer	Billings	Tri-State Tr & Eq.
(P) O I	Steve Turkiewicz	Helena	Mt. Auto Dealers
(P) O I	Brad Griffin	Helena	MT Equip Dealers Ass
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Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony

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MINUTES

MONTANA HOUSE OF REPRESENTATIVES
57th LEGISLATURE - REGULAR SESSION
COMMITTEE ON BUSINESS AND LABOR

Call to Order: By **CHAIRMAN JOE MCKENNEY**, on March 12, 2001 at 9:00 A.M., in Room 172 Capitol.

ROLL CALL

Members Present:

Rep. Joe McKenney, Chairman (R)
Rep. Gary Matthews, Vice Chairman (D)
Rep. Sylvia Bookout-Reinicke (R)
Rep. Roy Brown (R)
Rep. Nancy Fritz (D)
Rep. Dave Gallik (D)
Rep. Dennis Himmelberger (R)
Rep. Carol C. Juneau (D)
Rep. Jim Keane (D)
Rep. Rick Laible (R)
Rep. Bob Lawson (R)
Rep. John Musgrove (D)
Rep. William Price (R)
Rep. Allen Rome (R)
Rep. Donald Steinbeisser (R)
Rep. James Whitaker (R)

Members Excused: Rep. Rod Bitney, Vice Chairman (R)
Rep. Kathleen Galvin-Halcro (D)
Rep. Brett Tramelli (D)

Members Absent: None.

Staff Present: Gordon Higgins, Legislative Branch
Jane Nofsinger, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB274, SB145, SB432, 3/9/2001
Executive Action: SB74, SB421, SB432

EXECUTIVE ACTION ON SB432

Motion: **REP. LAIBLE** moved that **SB432 BE CONCURRED IN.**

Discussion:

REP. MATTHEWS asked when they would be paying this money back.

CHAIRMAN MCKENNEY said these are general obligation bonds and the state is responsible for them if they are not paid. He said the bill will lead to an increase in jobs and in income taxes which is the key to bond payback. He said if there was not enough income projected these bonds were not issued.

REP. JUNEAU said she thought it seemed like a good idea but she didn't see any Butte endorsers.

REP. KEANE said he hoped that was just an oversight. He noted this had about as high a potential as the committee had seen for economic development. He pointed out that Butte-Silver Bow had already "stepped up to the plate."

Vote: Motion **carried unanimously.**

EXECUTIVE ACTION ON SB74

Motion: **REP. LAIBLE** moved that **SB74 BE CONCURRED IN.**

Vote: Motion **carried unanimously.**

REP. STEINBEISSER will carry this bill in the House.

EXECUTIVE ACTION ON SB421

Motion: **REP. LAIBLE** moved that **SB421 BE CONCURRED IN.**

Discussion:

REP. LAIBLE said after a long discussion with **Ms. Jamison**, he had come up with one amendment to change 45 days to 60 days. He said,

HOUSE OF REPRESENTATIVES
ROLL CALL

HOUSE BUSINESS AND LABOR COMMITTEE

DATE MARCH 12, 2001

NAME	PRESENT	ABSENT	EXCUSED
Rep. Joe McKenney	✓		
Rep. Gary Matthews	✓		
Rep. Roy Brown	✓		
Rep. Kathleen Galvin-Halcro			✓
Rep. Carol Juneau	✓		
Rep. Rick Laible	✓		
Rep. John Musgrove	✓		
Rep. Nancy Rice-Fritz	✓		
Rep. Don Steinbeisser	✓		
Rep. Jim Whitaker	✓		
Rep. Rod Bitney			✓
Rep. Sylvia Bookout-Reinicke	✓		
Rep. Dave Gallik	✓		
Rep. Dennis Himmelberger	✓		
Rep. Jim Keane	✓		
Rep. Bob Lawson	✓		
Rep. Bill Price	✓		
Rep. Brett Tramelli			✓
Rep. Allen Rome	✓		

HOUSE STANDING COMMITTEE REPORT

Mr. Speaker:

We, your committee on **Business and Labor** recommend that **Senate Bill 74** (third reading copy - blue) **be concurred in**.

Signed: Joe McKenney
Representative Joe McKenney, Chair

To be carried by Representative
Donald Steinbeisser

- END -

Committee Vote:
Yes 19, No 0.

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